

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

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CLAIMANT: Dale E. Rugwell

CASE 41U-0130-R-2023
41U 207754-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Dale E. Rugwell is the record owner of claim 41U 207754-00.
2. Claim 41U 207754-00 was decreed with DNRC issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 3.50 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. Claimant Dale E. Rugwell was ordered to meet with the DNRC to address the first issue remark decreed on claim 41U 207754-00.

3. On March 29, 2023, DNRC Water Resource Specialist Jason Larsen filed a Memorandum. (Doc. 3.00)¹ Mr. Larsen indicated he communicated with Mr. Rugwell and Mr. Rugwell explained that the claim was established by his father in 1972, Mr. Larsen recounted:

It sounds as though his father estimated on the possibility that the entire 5-acre property would be watered/irrigated, not taking into account any buildings, roads, or areas made unusable by the riverbank. Also, due to bank erosion, the river has moved further onto the Rugwell property over the years, cutting into the Rugwell family's useable land.

Mr. Larsen attached an Amendment, completed by Mr. Rugwell, to the Memorandum. The same Amendment was filed by Mr. Rugwell on March 24, 2023. (Doc. 2.00)

4. The Amendment submitted by Mr. Rugwell indicates the following changes should be made to claim 41U 207754-00:

Flow Rate:	38.00	85.27-GPM						
Volume:	9.04	45.00-AC-FT						
Maximum Acres:	3.50	5.00						
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	5.00	3.50	SWNE	NE	14	18N	3W	LEWIS AND CLARK
Total:	5.00	3.50						

5. Mr. Larsen recommended that the changes outlined in the Motion to Amend be made to claim 41U 207754-00, and that the issue remark be removed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. The point of diversion issue remark decreed on claim 41U 207754-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41U 207754-00 should be modified as shown in Finding of Fact No. 4.
2. The issue remarks should be removed from claim 41U 207754-00. A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Dale E. Rugwell
610 5th Ave S
Great Falls, MT 59405-2007

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 207754-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DALE E RUGWELL
610 5TH AVE S
GREAT FALLS, MT 59405 2007

Priority Date: MARCH 13, 1972

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 38.00 GPM

Volume: 9.04 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 3.50

Source Name: DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	14	16N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

Subdivision: TRACT/LOT: 9

THE POINT OF DIVERSION IS LOCATED IN THE DEARBORN MEADOWS
SUBDIVISION, LOT 9.

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.50		SWNE	14	16N	3W	LEWIS AND CLARK

Total: 3.50

THE PLACE OF USE IS LOCATED IN THE DEARBORN MEADOWS SUBDIVISION, LOT
9.